

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims null and void ab initio. UMC 287314-UMC 287332.

Reversed.

1. Mining Claims: Lands Subject To -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Revocation and Restoration

Lands withdrawn from entry under some or all of the public land laws remain withdrawn until there is a formal revocation or modification of the order of withdrawal. Where a public land order withdrawing lands from location of mining claims for metalliferous minerals is expressly amended by a subsequent public land order deleting certain lands from the withdrawal, a decision declaring mining claims located thereafter for precious metals on lands deleted from the withdrawal to be null and void ab initio will be reversed.

APPEARANCES: Harry J. Ayala, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Harry J. Ayala from a decision of the Utah State Office, Bureau of Land Management (BLM), declaring certain mining claims located by appellant, Kito Nos. 1 through 17, 19, and 26 (UMC 287314-UMC 287332) null and void ab initio. The basis given for the decision was that the lands were withdrawn from mineral entry by Exec. Order No. (EO) 5327 and Public Land Order No. (PLO) 4522.

In his statement of reasons of appeal, appellant acknowledges the existence of EO 5327 and PLO 4522, but asserts they were superseded by PLO 5157 which deleted certain national forest lands from the prior orders.

Examination of the case file discloses the appellant's mining claims were located in the months of September through November 1985 on certain lands in sec. 31, T. 10 S., R. 5 E.; sec. 6, T. 11 S., R. 5 E.; and sec. 1, T. 11 S., R. 4 E., Salt Lake Meridian, Utah. According to the notices of location, the claims were located for gold, silver, and other precious metals.

Reference to the copies of the master title plats in the case file indicates that all of this land was included in the oil shale withdrawal and hence was "withdrawn from lease or other disposal and reserved" pursuant to the terms of EO 5327 dated April 15, 1930. Thereafter, the lands were withdrawn from appropriation under the mining laws relating to metalliferous minerals pursuant to the terms of PLO 4522, 33 FR 14349 (Sept. 24, 1968). These withdrawals formed the basis for the BLM decision under appeal.

However, as pointed out by appellant, the lands were subsequently affected by PLO 5157, 37 FR 3057 (Feb. 11, 1972), which amended PLO 4522. PLO 5157, by its terms, provided that PLO 4522, which withdrew deposits of oil shale and lands containing such deposits from entry under the mining laws relating to metalliferous minerals, "is hereby amended to delete * * * [certain] described national forest lands." 37 FR 3057. Among the lands deleted were those embraced in appellant's mining claims. The terms of PLO 5157 further provided that, "This order does not otherwise change the status of the lands or their withdrawal for oil shale made by Executive Order No. 5327 of April 15, 1930 * * *." 37 FR at 3058.

Accordingly, the issue raised by this appeal is whether PLO 5157 had the effect of modifying the withdrawal and restoring the land to location of mining claims for metalliferous minerals.

EO 5327 was issued pursuant to the authority of the Act of June 25, 1910 (Pickett Act), ch. 421, §§ 1, 2, 36 Stat. 847 (repealed, Federal Land Policy and Management Act of 1976, P.L. 94-579, § 704(a), 90 Stat. 2792). Lands withdrawn under this authority were open to location of mining claims for metalliferous minerals. See Mineral Life Corp., 81 IBLA 103, 104 (1984); Langdon H. Larwill, 54 I.D. 190 (1933). ^{1/} The land embraced in appellant's mining claims was further withdrawn from location of mining claims for metalliferous minerals pursuant to the terms of PLO 4522. This had the effect of closing the lands to all location of mining claims. See Azome Utah Mining Co., 86 IBLA 170 (1985); Mineral Life Corp., *supra*; Charles H. Phillips, 78 IBLA 320 (1984).

[1] With regard to the validity of claims located on lands previously withdrawn from entry, the rule has been stated as follows:

[T]he consistent position of this Department has been that lands which are withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal. The

^{1/} In this regard, EO 5327 may be contrasted with withdrawals or reservations made pursuant to the general or inherent authority of the President of the United States which were not limited by the terms of the Pickett Act providing the land shall be open to location under the mining laws as they apply to metalliferous minerals. See P&G Mining Co., 67 I.D. 217, 218-19 (1960).

mere passage of time or the accomplishment of an avowed purpose cannot serve as a substitute for the formal restoration * * *.

Tenneco Oil Co., 8 IBLA 282, 283-84 (1972). In the context of the present appeal, the question is whether the withdrawal of the subject land was revoked or modified by PLO 5157 in 1972 to allow location of claims for metalliferous minerals. We must conclude that it was. PLO 5157 expressly "amended" PLO 4522 to delete certain national forest lands. This constitutes an explicit modification of the order of withdrawal. This Board has had occasion to find lands restored to location of claims under the mining laws where a withdrawal from mining location was implicitly superseded by a subsequent national forest withdrawal. See Dolores Olsen, 45 IBLA 232 (1980). A fortiori, the terms of PLO 5157 in this case were sufficient to modify the withdrawal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge